



TRANSMITTAL FORM

Application Number		10/721,299
Filing Date		November 24, 2003
First Named Inventor		Hall
Art Unit		3721
Examiner Name		Huynh
Total Number of Pages in This Submission	5	Attorney Docket Number 54024-44719

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May 8, 2006

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In re application of: Hall, William A. :

Serial No.: 10/721,299 :

Examiner: HUYNH, Louis K.

Filed: November 24, 2003 :

Group Art Unit: 3721

For: FOOD PACKAGING CLOSURE
APPARATUS :

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REPLY BRIEF UNDER 37 CFR § 41.41

Page 6 of the Examiner's Answer presented new grounds of rejection that were not presented in the Final Rejection of the application claims. This Reply Brief addresses the new grounds of rejection.

On page 6 of the Examiner's Answer, it is contended that because the specification states that the tubular body could be formed with a somewhat rigid plastic material, then the vertical wall 42 of the tubular body 20 disclosed by the Peebles reference is "equivalent" to the claimed means for attaching and means for removably attaching recited in claims 1 and 2, respectively. However, this rejection is looking at only certain features of two embodiments of

the invention described on page 7 of the specification, while ignoring other features of the two embodiments.

Page 7 of the specification describes two embodiments of the invention. In the first embodiment, the tubular body is constructed of a material that gives the body a limited resilience which allows the second end edge 34 of the tubular body to stretch slightly and engage in a tight-sealing fit around the packaging 56 of a food product 14. This is described in lines 6-9 of page 7. Thus, the “means for attaching” or “means for removably attaching” in this first described embodiment is the limited resilience of the tubular body 16 that stretches slightly when the tubular body is positioned on food packaging that does not have any appreciable resilience. The stretching of the tubular body allows the tight-sealing fit of the tubular body around the food packaging.

The second embodiment of the invention described on page 7 of the specification comprises a tubular body 16 that is formed of a somewhat rigid plastic material. Passing the food product 14 through the interior of this second embodiment of the tubular body 16 will result in the second end edge 34 of the tubular body compressing the food product and engaging in a tight-sealing fit around the packaging 56 of the food product. This embodiment is described in lines 9-15 of page 7 of the specification.

Thus, when the tubular body 16 is attached to food packaging of a product that has a resilience, the “means for attaching” or the “means for removably attaching” is the somewhat rigid plastic material of the tubular body which functions to compress the food product to produce a sealing fit. The Peebles reference fails to identically show this claimed “means.”

In the Peebles reference, a rigid tubular body is attached to a rigid pan. This is not the same “means for attaching” or “means for removably attaching” the rigid tubular body of claims 1 and 2 described in the specification. The vertical wall 42 of the Peebles reference does not compress the pan it is attached to and, therefore, the Peebles reference does not identically show the “means for attaching” or “means for removably attaching” cited in respective claims 1

and 2. Of the resilient tubular body and rigid tubular body embodiments of the invention described on page 7 of the specification, the Peeples reference only discloses a rigid collar vertical wall 42. The vertical portion 42 of the collar engages the side walls 34 and/or the end walls 36 of the pan 30 (column 3, lines 62-64 of the Peeples reference). The Peeples reference does not disclose the "means for attaching" the rigid tubular body of the invention 16 on the packaging of a food product 14 by "compressing the food product and engaging in a tight-sealing fit around the packaging 56 of the food product" as described on page 7 of the specification.

To determine whether a claim limitation is meant literally where expressed as a means for performing a stated function, a court must compare the accused structure with the disclosed structure and must find equivalent structure as well as identity of claimed function for that structure.

Pennwalt Corp. v. Durand-Wayland, Inc., 833 F.2d 931, 4 U.S.P.Q. 2d. 1737 (Fed. Cir. 1987).

The Peeples reference does not identically show the claimed function for the rigid tubular body embodiment of the invention as required by the above-cited case law. The Peeples reference does not identically show the vertical wall 42 of the collar compressing the food product as it engages in a tight-sealing fit around the packaging of the food product. Because the Peeples reference does not identically show this function, the reference does not anticipate claims 1 or 2, and the rejection of the claims should be reversed and the claims allowed.

The Examiner's Answer also contends that the Peeples reference discloses the claimed rim of the invention that engages with the lid of the invention. However, the rejection is based on interpreting two parts of the Peeples collar, the collar ridge 24 and the collar flange 26 as the claimed rim. The collar flange 26 is relied on for a rim that projects outwardly from the tubular body as recited in claim 7, and the ridge 24 is relied on for a rim that engages with a lid. However, the language of the claims describes the single rim as both projecting outwardly from the tubular body and engaging with a lid. The two separate structures 24, 26 of the Peeples

reference do not identically show this one feature of the invention recited in the claims. The interpretation of the Peeples reference is based on hindsight of the invention. Because the Peeples reference does not identically show the claimed rim of the invention, the rejections of claims 7 and 8 should be reversed and the claims allowed.

The Examiner's Answer also presents arguments that the pan 30 disclosed in the Peeples reference is packaging of a food product because the pan contains a food product. This interpretation is also based on hindsight of the invention.

The Peeples reference describes a pan of the type found in a typical kitchen.

A general rule of interpretation is that words in a claim will be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently.

Casler v. United States, 15 Cl.Ct. 717, 9 U.S.P.Q. 2d 1753 (1988).

The ordinary skilled artisan would not consider the ordinary and accustomed meaning of a pan to be food packaging. The rule is not whether a "pan" could be food packaging, but whether the ordinary and accustomed meaning of "food packaging" includes a pan. Interpreting the pan as food packaging is based on hindsight of the invention, and therefore the rejection of claim 14 should be reversed and the claim allowed.

Respectfully submitted,

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